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TRANSMITTAL FORM (to be used for all correspondence after Initial filing)	Application Number	09/769,939	
	Filing Date	01/26/2001	
	First Named Inventor	CALVERT, ET AL.	
	Group Art Unit	2686	
	Examiner Name	QUINONES, ISMAEL C.	
Total Number of Pages in this Submission	7	Attorney Docket Number	PF01763NA
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Signature			
Date	24 NOV 2004		
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	CALVERT, ET AL.	ART UNIT:	2686
APPLN. NO.:	09/769,939	EXAMINER:	QUINONES, ISMAEL C
FILED:	01/26/2001	DOCKET:	PF01763NA
TITLE:	METHOD AND APPARATUS FOR ACCURATELY LOCATING A COMMUNICATION DEVICE IN A WIRELESS COMMUNICATION SYSTEM		

INTERVIEW SUMMARY

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Responsive to the Interview Summary dated November 17, 2004, following is Applicant's statement of the substance of the interview conducted on November 15, 2004.

Remarks begin on page 2 of this paper.

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REMARKS

Interview Summary

Applicant thanks the Examiner for his courtesy in extending a telephone interview with Applicant's representative on November 15, 2004 and his patience in listening to Applicant's arguments. With reference to 37 C.F.R. § 1.104(c)(2), Applicant believes that Mohi 2003 (U.S. Pub. No 2003/0195008 A1), with a filing date after the application filing date, is not the best reference relative to Mohi 2002 (U.S. Pub No. 2002/006800 A1), with an effective filing date before the application filing date, because Mohi 2003 is a continuation-in-part to Mohi 2002 and any differences between Mohi 2003 and Mohi 2002 are new matter and not *prior* art relative to the present application.

Examiner clarified his November 3, 2004 Advisory Action and insisted that all the parts of Mohi 2003 that he uses in his rejection are entitled to a July 14, 2000 effective filing date due to (1) the subject matter of Mohi 2003 being analogous to Mohi 2002 and (2) Mohi 2003 being a continuation-in-part of Mohi 2002 which is a non-provisional of provisional application 60/208,454 filed on July 14, 2000.

Applicant specifically questioned the Examiner as to whether the new matter in Mohi 2003 relative to Mohi 2002 (e.g., paragraphs [0082]+ of Mohi 2003) are entitled to an effective filing date of July 14, 2000, and the Examiner restated that the portions of Mohi 2003 that discuss providing more precise geographic location information, including those that were in paragraphs [0082]+, are analogous to Mohi 2002 and therefore are entitled to an effective filing date of July 14, 2000. Applicant disagrees.

Applicant repeated her assessment that new matter in Mohi 2003 relative to Mohi 2002 is only entitled to an effective filing date of April 23, 2003 (the actual filing date of Mohi 2003), which is after the filing date of the application. Thus, if any of the Mohi references is to be used in a rejection of the present application, it should be Mohi

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2002. The Examiner disagreed and stated that Mohi 2003 was a better reference than Mohi 2002.

Applicant does not recall the Examiner stating that both Mohi 2003 and Mohi 2002 show or disclose Applicant's invention as stated in the November 17, 2004 Interview Summary. In any event, the Examiner has never explained how Mohi 2002 applies to the present claims in accordance with 37 C.F.R. § 1.104(c)(2), and thus the veracity of such a statement is unsubstantiated.

SUMMARY

The rejection of the claims is improper on its face in view of its reliance upon a non-prior art reference (i.e., a reference that is not "prior" in light of 35 U.S.C. § 102 and § 103 and clarifying case law such as *In re Wertheim*, 209 USPQ 554, 564 (CCPA 1981)). See also MPEP 2136.03 Part IV. The Examiner should withdraw the final rejection and issue a proper rejection, and then the Applicant will reply based on the substance of the claims. An examiner bears the burden of presenting at least a prima facie case of obviousness. Only if that burden is met, does the burden of going forward shift to the applicant. *In re Glaug*, 62 U.S.P.Q.2d 1151 (Fed. Cir. 2002); *In re Ona*, 38 U.S.P.Q.2d 1597, 1599 (Fed. Cir. 1995); *In re Oetiker*, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992); and *In re Piasecki*, 223 U.S.P.Q. 785 (Fed. Cir. 1984).

Should the Examiner have any questions, comments, or suggestions, the Examiner is invited to contact Applicant's representative at the telephone number indicated below.

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Respectfully submitted,

Please send correspondence to:
Motorola, Inc.
Intellectual Property Dept. (SYC)
600 North U.S. Highway 45, AS437
Libertyville, IL 60048
Customer Number: 20280

By: *Sylvia Chen* 24 NOV 2004
Sylvia Chen Date
Attorney for Applicant
Registration No. 39,633
Tel. No. (847) 523-1096
Fax No. (847) 523-2350
Email: Sylvia.Chen@motorola.com